Uniform Law Commission

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May 22, 2012

Harold Koh
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RE: Implementation of the Hague Convention on Choice of Court Agreements

Dear Harold:

Let me begin with my personal and sincere thanks for the substantial investment of time and significant contributions that you have made in working towards a consensus on implementation of the Hague Convention on Choice of Court Agreements. Your leadership has been obvious and valuable, and I appreciate your candor throughout this process.

As you know, the Uniform Law Commission ("ULC") received your letter dated April 16 about a month ago, and the ULC has given very careful consideration to your letter and its attachments. In those documents, you propose a compromise solution to what you and your staff have identified as the remaining issues that must be resolved in connection with the implementation of the Hague Convention on Choice of Court Agreements.

The ULC representatives who have participated in the ASIL Working Group deliberations (Harriet Lansing, Chair of the ULC Executive Committee; Rex Blackburn, Chair of the ULC COCA Drafting Committee; Kathy Patchel, Reporter for the Drafting Committee; ULC Executive Director John Sebert; and I) have discussed the proposed compromise extensively. We also had a two-hour conference call with the ULC members of the Drafting Committee to discuss the proposal. All ULC participants understand that there are varying views among those who have been involved in the ASIL Working Group on implementation. We respect all participants and the sincerity of their stated positions and appreciate the challenge that you, ASIL Working Group Chair Ed Swaine and others have faced in attempting to reconcile the positions of all parties.

After extensive discussion, all ULC participants agree that there is one part of the proposal that the ULC cannot endorse, namely, the proposal that, if an action

covered by the Convention rules is filed in or removed to a federal court located in a state that has enacted the Uniform International Choice of Court Agreements Act, the provisions of the federal implementing statute, and not those of the state implementing legislation, would apply. Nevertheless, we continue to want to support this project and work towards enactment and implementation of the Convention and hope we can do so, once our concerns are addressed.

It has been our understanding that there was agreement early in the ASIL Working Group process on the principle of not unnecessarily altering the existing federal/state balance when Working Group Chair Edward Swaine stated the following in his memorandum of April 26, 2010:

> The parties all shared an interest in attending to the federal-state balance; while it would not be possible, in assuming a treaty obligation in context, to leave the traditional responsibilities unaffected, it was desirable to avoid unwarranted encroachment on state contract law and procedural law relating to non-convention matters.

It was also our understanding that the ASIL Working Group had agreed to a cooperative federalism approach as the way to avoid unnecessary disruption of the existing federal/state balance.

The compromise proposed is troubling, in that it does change the existing federal/state balance by altering a core principle that has governed questions of federal/state jurisdiction since the landmark decision of *Erie v. Tomkins*[1] in 1938 — that when an action is brought in federal court only under diversity jurisdiction, the federal court will apply *state* substantive law in deciding the dispute. This principle is central to the existing balance of federal and state juridical relationships and to the concept of "cooperative federalism" that ULC recommended when we were asked by the State Department in 2007 to assist in drafting the legislation necessary to implement the Choice of Court Agreement Convention.

The proposed reversal of the *Erie* doctrine for the implementation of this Convention results in different substantive law applying in the same state depending upon whether the litigation was tried in federal or state court. The proposed compromise also means that the applicable substantive law — the federal statute or the state enactment of the Uniform Act — would not be determined until the litigation was commenced and, if the litigation were brought in state court, the applicable substantive law would not finally be determined until it was clear that the case would not be removed to federal court. The proposed compromise significantly diminishes the effect of state substantive law in litigation since state legislation enacted to implement the Convention would apply *only* if the litigation were heard in state courts in the enacting state and not if the litigation were in federal courts located in that state. This alteration in the current balance of the applicability of federal and state legislation is not

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[1] 304 U.S. 64 (1938)

necessary in order to implement the Convention and violates principles of federal/state jurisdiction that have existed since *Erie.*

In the ULC's judgment, this aspect of the proposed compromise also has other significant problems:

First, this is a rule which facilitates forum shopping. Normally, when one thinks of forum shopping, the concern is that the existence of different rules will allow the plaintiff to pick from among the jurisdictions in which it can acquire jurisdiction over the defendant in order to access the jurisdiction in which it feels the law is most favorable to its position. This proposed rule would add to that concern the ability of the plaintiff to forum shop *within* a jurisdiction to pick the most favorable law by choosing to proceed either in federal or state court. In this regard this proposal is reminiscent of the rule of *Swift v. Tyson,* which was rejected by the U.S. Supreme Court in *Erie v. Tompkins.* One of the main reasons the *Erie* Court overruled *Swift* was because in sanctioning the application of different rules depending upon whether the case was in state or federal court, the doctrine encouraged forum shopping.[2]

Second, the proposed rule can be seen as unfair to defendants. The Supreme Court stated in *Erie* that allowing different common law rules to apply in state and federal courts was discriminatory to defendants in violation of the Equal Protection Clause:

> Diversity of citizenship jurisdiction was conferred in order to prevent apprehended discrimination in state courts against those non citizens of the state. Swift v. Tyson [allowing federal courts to apply different common law rules from those applicable in state courts in diversity cases] introduced grave discrimination by noncitizens against citizens. It made rights ... vary according to whether enforcement was sought in the state or in the federal court, and the privilege of selecting the court in which the right should be determined was conferred upon the noncitizen. Thus, the doctrine rendered impossible equal protection of the law. In attempting to promote uniformity of law throughout the United States, the doctrine had prevented uniformity in the administration of the law of the state?[3]

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[2] *Id.* at 73. This proposal, of course, differs from the situation in *Erie* in that it deals with the potential for two competing statutes rather than two competing interpretations of the common law. Further, the ULC has worked closely with the State Department to minimize the textual differences between the federal statute and the uniform law. Despite that effort, however, it is undeniable that differing interpretations of some provisions will occur, within each judicial system as well as between the two. Indeed, as illustrated by recent Second Circuit cases applying forum non conveniens to deny recognition to arbitral awards under the Panama Convention and the New York Convention, significant and ultimately outcome determinative differences in interpretation can occur even when dealing with only one text and one court system. *See Figueiredo Ferraz E Engenharia De Projeto LTDA,* 665 F.3d 384 (2d Cir. 2011); *In re Arbitration Between Monegasque De Reassurances SAM. v. Nak Naftogaz of Ukraine,* 311 F.3d 488 (2d Or. 2002).

[3] *Id.* at 74-75.

A similar concern is raised by the proposal that different statutory law apply depending upon whether the parties are in state or federal court.

Third, the proposed compromise leads to increased uncertainty and unpredictability when the goal of the Convention is to create more certainty in the enforcement of choice of court agreements and the recognition and enforcement of the resulting foreign country judgments. Even though the parties may be able to determine *ex ante* the jurisdiction whose laws are relevant to their agreement, they will not be able to determine the law that will apply until the plaintiff decides in which court within that jurisdiction it will file suit.

Fourth, the compromise proposal creates uncertainty as to the applicability of other aspects of state law in an action brought in federal court under diversity jurisdiction. If the federal implementing legislation directs, that the federal implementing statute rather than the state's enactment of the Uniform Act controls, what law will control with respect to the many issues that are left to other law by the Convention? These issues include, among others, the basic issue of whether there was consent to a choice of court agreement and the defenses both to honoring the parties' choice of court agreement and to recognizing and enforcing the judgment of the chosen court, such as that the agreement was null and void, or a party to the agreement lacked capacity, or that the judgment was obtained by fraud.[4] Will state law on these matters control, as they would under *Erie,* or will federal courts in diversity cases under the Convention take the direction to apply the federal rather than the state statute also to direct — or at least permit — the development of a federal common law for the purposes of deciding matters such as the validity of a choice of court agreement?

Finally, this proposal appears to be without precedent — other than the negative precedent of *Swift v. Tyson.* Some of those who support this proposal have suggested that cooperative federalism is a new concept and thus can be defined to include their proposal. This, however, is not the case. Cooperative federalism is a doctrine whose elements are well-defined, and which has long been applied as a means to allow federal policy to be carried out through state legislation. As the U.S. Supreme Court stated in *New York v. United States:*

> [W]here Congress has the authority to regulate private activity under the Commerce Clause, we have recognized Congress power to offer States the choice of regulating that activity according to federal standards or having state law pre-empted by federal regulation. This arrangement, which has been

[4] All of the key provisions of the Convention — the duty to hear cases as a chosen court, the duty to decline to hear cases as a non-chosen court, and the duty to recognize and enforce chosen court judgments — as well as many of the Convention's ancillary provisions, including the scope of the Convention and the key definition of what Constitutes an exclusive choice of court agreement, require the application of law outside the Convention which currently is state law in the United States. *See* Memo from Robert A. Stein to ASIL Working Group on Implementation of the Convention on Choice of Court Agreements, dated June 11, 2010 for a full exposition of the areas in which the Convention relies on national law that is currently state law in the United States.

> termed "a program of cooperative federalism," is replicated in numerous federal statutory schemes.[5]

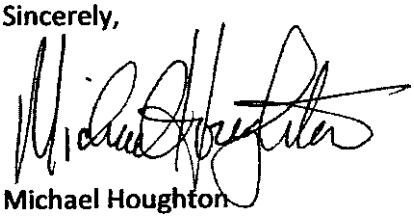
The defining element of cooperative federalism is the national government's decision to allow the states to regulate a particular subject matter area under federal guidelines, if the states choose to do so. The proposal to determine whether federal or state law applies based on the court in which the action is heard does not fit the cooperative federalism model. Under this proposal, it is not the state's choice to adopt the uniform act that determines the governing law with regard to this subject matter, but rather the plaintiffs choice of the court in which the case is heard.

The ULC understands the value of the Convention and the benefits that would accrue to United States parties to international commercial transactions if the Convention were implemented in the United States and in a significant number of other countries. We also know the tremendous amount of work all stakeholders — including but not limited to the State Department, Justice Department and the ULC — have dedicated to this project. We sincerely hope that the Convention can be implemented in the United States and that an agreement can be reached that will enable the ULC to continue to support you and others in finalizing plans for implementing the Choice of Court Agreement Convention in the United States.

The ULC can actively support your proposed compromise and work toward implementing the Convention if there is removal from the compromise of the portion which applies the provisions of the federal implementing legislation when an action is brought in a federal court — even when that court is located in a state that has adopted the state implementing legislation. The ULC has no objection to any of the other aspects of the proposed compromise. We remain open to, and available for, additional discussion. We are committed to finding an approach that allows us to support the convention but, as I hope you appreciate, we have serious concerns which unfortunately prevent us from supporting this one aspect of your proposal.

Thank you, again, for your leadership and patience. We look forward to further dialogue on this topic.

Sincerely,



Michael Houghton
President, Uniform Law Commission

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[5] SO5 U.S. 144, 167 (1992).

THE LEGAL ADVISER
DEPARTMENT OF STATE
WASHINGTON

July 2, 2012

Mr. Michael Houghton
President
Uniform Law Commission
Morris, Nichols, Arsht & Tunnell LLP
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Dear Mike:

I am in receipt of your letter of May 22. 2012 regarding domestic implementation of the Hague Convention on Choice of Court Agreements (COCA). I very much regret that the Uniform Law Commission is unable to accept the compromise proposed in the paper that we circulated to you on April 16. As we consider next steps in a matter that is of high importance to the U.S. government and to U.S. litigants, I believe that it would be useful to review the most salient points.

First, we think that the approach outlined in our paper is a principled one that balances federal and state interests. As discussed in the paper, U.S. policy interests are best served by having federal courts apply federal law in this situation, for several reasons:

(1) As a matter of principle, where a federal statute has been developed to implement a treaty, federal courts should apply it.
(2) Applying federal law would simplify the task for federal courts, which would not need to interpret state law or analyze whether state law should be preempted.
(3) Applying federal law would promote the development of jurisprudence on interpretation of that law, which is key to determining whether federal law should preempt state law in a given case. That would promote greater uniformity in treaty implementation.
(4) Applying federal law would make the implementation process more direct, more transparent, and more attractive to potential treaty partners and foreign litigants.

Second, and as important, we think after extended discussion with all stakeholders — that our proposed approach is the only possible compromise among stakeholders with strongly divergent views and interests. We recognize that the ULC has important interests at stake, but as you know, other constituencies do as well. As you are aware, a number of individuals and groups, many involved in international litigation practice, have argued strongly that the COCA should be implemented in the same manner as the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, i.e., with express original federal court jurisdiction (concurrent with state court jurisdiction). Such stakeholders have questioned the need for parallel state implementing legislation at all. They see the adoption of a cooperative federalism

approach, and the absence of original federal jurisdiction, as major concessions. The prevailing response of the stakeholders we consulted was that they were prepared to make those concessions in the context of the compromise proposed in our paper if necessary to enable the United States to ratify the COCA, although a common theme was that too much had already been given away.' Also, we have recently been advised that the Committee on Federal-State Jurisdiction of the Judicial Conference of the United States has considered our proposed approach and can accept it. We note that the ULC's response - rejection of the proposal on applicable law in federal court and acceptance of the other aspects of the proposal - represents no compromise, as those other aspects reflect positions already advocated by the ULC. Absent some flexibility, we see no way forward.

Third, we think your letter raises incorrect legal objections, based on traditional *Erie* analysis, about applying federal law in federal court in implementing the COCA. As noted in our paper, the Office of Legal Counsel at the Justice Department reviewed the proposal and concluded that the proposed approach is consistent with *Erie* and the requirements of Equal Protection. Your letter overlooks several critical points that make this situation unique. First, this is not a standard situation involving citizens of different states litigating over a private state law matter. We are implementing a national treaty. negotiated, concluded and (we hope) ratified in accordance with the Federal Government's treaty powers under the Constitution. Second, the cooperative federalism approach being followed for the COCA is premised upon the necessity of the federal implementing law and the uniform state act being substantively the same - in fact, identical insofar as possible. For this method of treaty implementation to work properly, the results under either state or federal implementing law should be the same. Third, insofar as any material difference would arise in interpretation between the federal implementing law and a state enactment of the uniform act, the federal implementing law would preempt.

Against this background, we believe the ULC's concerns about forum shopping, unfairness, and uncertainty are misplaced. Since the federal implementing law and the uniform state act are designed to produce the same results. and since the federal implementing law will preempt in case a material interpretive difference arises, it is difficult to discern how any litigant would be disadvantaged by having the federal statute applied in federal court. We believe this would promote uniformity and certainty, not detract from it.

Fourth, your letter raises concerns about uncertainty in the application of other aspects of state law in a diversity action in federal court, e.g.. matters of contract law such as capacity to enter into an agreement or whether an agreement is null and void. We see no reason why those issues would be treated any differently under the federal implementing statute in a state that has enacted the uniform act than they would be treated under the federal implementing statute in a state that has chosen not to enact the uniform act. In either case, it is understood that the federal court would be applying certain principles of state law. The proponents of a federal-only

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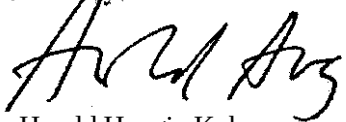
The Committee on International Commercial Disputes of the New York City Bar, members of the New York State Bar Association International Section Executive Committee, and the clear prevailing majority of polled members of the International Law Section of the American Bar Association have generally expressed willingness to support the approach set forth in the April 16 paper in order to achieve U.S. ratification of the COCA, but only as a necessary compromise. The Maritime Law Association of the United States opposes doing so. objecting to the cooperative federalism approach and the lack of original federal subject matter jurisdiction.

approach to implementation of the COCA have acknowledged as much from the outset of our discussions.

Finally, we are perplexed by the claim in your letter that our proposed approach is without precedent. Our paper points out that in fact there is Supreme Court precedent for the application of federal substantive law in diversity cases. What is novel in this case is the specific proposal made for exclusive use of federal legislation in federal court in this particular treaty context. What has been truly novel here is the basic approach of attempting to implement the COCA through parallel state and federal legislation. This is an experiment. We believe that creative solutions are appropriate and in fact necessary in order to bridge the policy differences that exist among key stakeholders. We also believe we have reached a fair compromise that protects the interests of all stakeholders and the United States.

Mike, I am grateful for the commitment of the Uniform Law Commission to this project — and especially for the personal efforts that you and others in the ULC have made in trying to find an agreed basis that would permit us to proceed with the ratification of the COCA. But given your current position, I see no prospect of agreement in the near term. I am therefore recommending to ASIL that the working group that has been so ably chaired by Professor Edward Swaine stand down for the time being as we assess what might next be done.

Sincerely,



Harold Hongju Koh
Legal Adviser

THE LEGAL ADVISER
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August 6, 2012

Mr. Michael Houghton
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Dear Mike:

I am writing to follow up on my letter to you dated July 2. 2012 regarding implementation of the Hague Convention on Choice of Court Agreements. I am sorry 1 could not again attend the Uniform Law Commission's annual meeting in Nashville, as I did last year. but Assistant Legal Adviser Keith Loken has reported to me about it. I very much appreciate your giving him the opportunity to address the plenary, particularly with regard to the current impasse regarding finding an agreed implementation approach, and arranging a small group meeting with Keith on that subject. I am very grateful for your continued personal commitment to this important endeavor, and I thank all those in the ULC who have devoted many hours of hard work to making the Convention a reality for U.S. persons engaged in cross-border commercial transactions.

As you know, the State Department has made unprecedented efforts to implement this treaty in a way that accommodate principles of federalism. Over the past two and a half years, we have promoted numerous meetings and extended discussions among concerned stakeholders regarding an implementation scheme for the Convention. At those meetings, many participants have expressed strongly held and divergent views on issues relating to the scope of federal court jurisdiction and the law applicable in federal court. The compromise proposal set forth in the April 16, 2012 White Paper was intended to bridge the differences among the many views expressed. After careful consideration and thorough study, we believe that the White Paper's approach represents a principled position and the one most likely to attract broad support from different stakeholders. Indeed, the bar groups and practitioners that we have consulted have largely accepted that approach, although most say that they would prefer an exclusively federal approach.

Given that background, I remain puzzled as to why the 111,C leadership characterizes the question of application of federal law in federal court in diversity actions under the Convention as a make-or-break issue that the ULC has no flexibility to accept. As we have explained in the White Paper, this situation differs dramatically from *Erie R.R. Co. v. Tompkins*--which involved straightforward application of state tort law in a federal diversity case-- inasmuch as there are sound reasons for a federal court to apply federal law in the unique circumstance where a state

has enacted a uniform act that is essentially identical with a parallel federal statute for the express purpose of implementing a treaty of the United States. The Office of Legal Counsel of the Justice Department has opined that this approach is consistent with *Erie.* Nor has anyone demonstrated how a litigant could possibly be disadvantaged by the application of federal law in federal court in the special circumstances here • where the federal and state laws are by design as identical as possible, and where the federal law would preempt in the event of any substantive difference.

Under any fair reading, our proposed approach reasonably respects and accommodates principles of federalism. Our proposed approach remains premised on a cooperative federalism approach involving parallel federal and state legislation, with states having the ability to elect to opt out of the federal statute and instead be governed by state law, applicable in state court, based on the uniform act developed by the Uniform Law Commission. It makes no change in existing rules regarding diversity jurisdiction or removal to federal court. It gives states autonomy in determining the length of the relevant statute of limitations and it allows states to elect whether to accept "no-connection" cases that involve no contacts with the forum. Nor does our proposed approach in any way impair the authority of the states to establish common law jurisprudence with respect to substantive law relating to contracts or the recognition and enforcement of judgments. Whether or not a court is applying the federal implementing law or a state's enactment of the uniform act, it is understood that certain principles of state law will apply - and the Convention does not seek to supplant existing substantive domestic law.]

I understand that the Uniform Choice of Court Agreements Convention Implementation Act was formally approved by the ULC on July 18. Keith explained at the annual meeting why we were not in a position to endorse that action. We see a serious risk of proliferation of non-conforming texts if the states proceed with enactment of the Uniform Act when the draft federal implementing law is still evolving. We hope that you will take this into account in the ULC's discussions with the states concerning the Uniform Act.

In the end, it is the job of this Office to determine what approach to treaty implementation would serve the best interests of the United States. Implementation of the Choice of Court Agreement Convention through parallel, and essentially identical, federal and state laws is a novel experiment. Given the strong differences in views among key constituencies, creativity and flexibility are needed if we are to find a way forward. In the special circumstances of this Convention, we believe that the approach set forth in the White Paper is the most reasonable one that best accommodates all interests.

We hope the ULC will be willing to explore the issues addressed in our White Paper. If so, I of course remain open to meeting with you to continue the discussion. If, however, you see

no basis for such discussion, then we must conclude that our attempts to fashion a cooperative federalism approach to implementation of the Convention cannot go forward, and we will need to consider alternatives. I very much hope that the ULC will reconsider its position so that we can continue to make progress toward implementation of this most important treaty.

Sincerely,

Harold Hongju Koh
Legal Adviser

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September 4, 2012

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RE: Implementation of the Hague Convention on Choice of Court Agreements

Dear Harold:

I write in response to your letter of August 6, 2012.

As a preliminary matter, I would like to address the concern about the ULC's having given final approval to the Uniform Choice of Court Agreements Convention Implementation Act at the ULC Annual Meeting this past July. In particular, you express concern that there will be "a serious risk of proliferation of non-conforming texts if states proceed with enactment of the Uniform Act when the draft federal implementing law is still evolving." I can assure you, as I stated to Keith Loken when he attended the ULC Annual Meeting, that the ULC has no intention of asking states to enact the uniform act at this time, and in fact if we learn that a state is prematurely considering adopting the uniform act the ULC will discourage any such action. I recommended that the ULC take final action on the uniform act this July because it appeared to me and to others from the ULC who have been involved with this project that the work in crafting the substantive provisions of implementing state legislation was essentially completed. In addition, as I have indicated previously, if there are revisions to the uniform act that need to be made in light of subsequent changes to the federal legislation resulting from, for example, further executive or Congressional review of the implementing legislation, ULC has processes in place by which conforming changes to the uniform act may be made relatively quickly.

The major point of your letter, however, was to request that the ULC reconsider its opposition to one aspect of the proposal that you put forth in your letter of April 16 — the proposal that, if an action covered by the Convention, which necessarily would be a diversity action, is commenced in or removed to a federal court located in a state that has enacted the Uniform Act, the provisions of the federal implementing legislation, and not those of the state implementing

legislation, would control. I stated in my letter of May 22, 2012, the many reasons that the ULC objects to this unnecessary and, in our view, radical departure from the long-standing doctrine of *Erie v. Tompkins,* and I will not restate those views in this letter.

We have revisited the question and see no reason to change the ULC's position on this matter, a position which we note has also been expressed by the Conference of Chief Justices. We fail to see anything unique in this situation that would justify reversing the normal rule of *Erie.* At some of the meetings that we have attended on this matter we have heard those urging that the federal statute control even in diversity actions complain about the perceived difficulty of determining the applicable state legislation — but surely once a relevant state is identified, a competent paralegal could discover the applicable state legislation within a few minutes, in part by reviewing the most recent edition or supplement of Uniform Laws Annotated. Thereafter a quick textual comparison will be able to discover whether any relevant provision of the state enactment would be preempted under Section 405(c)(1) of the draft federal implementing legislation on the ground that the language of the state enactment varies from the Uniform Act.

In addition, the proposed compromise would establish an unacceptable precedent for the future implementation of any convention for which implementation by coordinated federal and state substantive legislation is contemplated. The ULC is currently collaborating with the State Department on such a project at this very moment, as the ULC is drafting revisions to the Uniform Child Custody Jurisdiction and Enforcement Act to implement the Hague Convention on the Protection of Children. While no decisions have yet been made concerning the relationship between federal and state law in the implementation of this Convention, it seems clear that if the Convention cannot be implemented by "conditional spending" — federal legislation that, as with the Hague Family Maintenance Convention and the 2008 amendments to the Uniform Interstate Family Support Act, requires states to enact the implementing uniform legislation or risk losing access to substantial related federal funding — the Protection of Children Convention will have to be implemented by coordinated federal and state legislation. If your proposal for implementation of the Choice of Court Convention were applied in the case of the Protection of Children Convention, the consequences would be even more disruptive to the federal/state balance.

Thus the ULC is concerned that the proposed compromise implementation methodology for the Choice of Court Convention, in addition to being unnecessary in the particular situation, will have significant and unpredictable implications for the implementation of other private international law conventions in the future. The result could be that, even if in the future a particular convention is implemented by coordinated federal and state legislation, the effect of that state legislation will be limited to actions brought in state courts.

The proposed compromise is not "cooperative federalism." As I pointed out in my letter of May 22, "cooperative federalism" is a well-defined doctrine, set out by the Supreme Court in New York v. United States, 505 U.S. 144 (1992), that permits federal policy to be implemented through state legislation. The proposed compromise would have the implementation of the Convention controlled by federal legislation except when the relevant action is brought in, and is not removed from, the courts of a state that has enacted the Uniform Act. This is not the method of implementing the Convention that the ULC understood was intended when, five years ago, it

undertook, at the State Department's invitation, to collaborate with the Department on this project.

We fully understand that it is the prerogative of the Legal Adviser ultimately to determine the methods by which any convention that the United States seeks to ratify is implemented. But you should also understand that the ULC is not able to support the mode of implementation that you propose.

On the other hand, the ULC strongly believes that the Hague Convention on Choice of Court Agreements is an extremely valuable convention that has the potential, once ratified by the United States and a number of other countries, to provide substantial benefits to those in the United States, and their contracting partners, who enter into cross-border commercial transactions. Thus my colleagues and I at the ULC are committed to working closely with you and others who are interested in the successful U.S. ratification of this Convention to develop an alternative proposal for implementing the Convention that might attract more widespread support.

We recognize that, in the process of reaching an agreement on implementation methodology, all parties will necessarily have to concede on some of their preferred positions. During the ULC Annual Meeting in July, Rex Blackburn, Chair of the ULC Drafting Committee, Immediate Past President Bob Stein, and I met with Keith Loken and offered some alternative suggestions for implementing this Convention. We would be pleased to continue to explore those suggestions in an effort to help us move beyond the current impasse.

Please give me a call if you wish to discuss these ideas further.

Sincerely,

Michael Houghton
President, Uniform Law Commission